No. 18-525

In the Supreme Court of the United States

FORT BEND COUNTY, TEXAS, PETITIONER

v.

LOIS M. DAVIS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the requirement in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, to file a charge with the Equal Employment Opportunity Commission is a jurisdictional prerequisite to suit that is immune to ordinary principles of forfeiture and waiver.

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INTEREST OF THE UNITED STATES

This case presents the question whether the requirement in Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. 2000e *et seq.*, to file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC or Commission) is a jurisdictional prerequisite to suit. The EEOC investigates charges of employment discrimination under Title VII and seeks to eliminate unlawful practices through informal methods. 42 U.S.C. 2000e-5(b). The EEOC and the Attorney General also have authority to bring civil actions against private employers and state and local governmental employers, respectively, for Title VII violations. 42 U.S.C. 2000e-5(f)(1). The United States has a substantial interest in the proper interpretation of Title VII.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-31a.

STATEMENT

1. Title VII prohibits discrimination in employment based on race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2. It establishes a "detailed multi-step procedure" to enforce that prohibition. *Mach Mining, LLC* v. *EEOC*, 135 S. Ct. 1645, 1649 (2015). The process "generally starts when 'a person claiming to be aggrieved' files a charge of an unlawful workplace practice with the EEOC," *ibid.* (citation omitted), which Congress charged with investigating and seeking to prevent discrimination, 42 U.S.C. 2000e-4(a), 2000e-5(a) and (b).

a. A Title VII charge "is not the equivalent of a complaint initiating a lawsuit." *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 68 (1984). A charge filed by an individual merely notifies the EEOC of the alleged discrimination, providing a starting point for the EEOC's investigation. *Ibid.* The statute prescribes only that "[c]harges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." 42 U.S.C. 2000e-5(b). Pursuant to statutory rulemaking authority, 42 U.S.C. 2000e-12(a), the EEOC has further specified that a charge should contain "[a] clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices"; the employer's contact information; and a statement of whether the charging party has instituted proceedings with a state or local agency. 29 C.F.R. 1601.12(a). Nonetheless, a charge is adequate if it contains "a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." 29 C.F.R. 1601.12(b).

Section 2000e-5(e)(1) of Title VII provides that "[a] charge under this section shall be filed" with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred." 42 U.S.C. 2000e-5(e)(1). If the alleged discrimination occurred in a State or political subdivision that has its own agency with authority to grant or seek relief, Title VII instead directs the individual alleging discrimination to commence proceedings with that agency first. See 42 U.S.C. 2000e-5(c). If the state or local proceedings do not resolve the matter, the individual has "three hundred days after the alleged unlawful employment practice occurred," or 30 days after being notified that those proceedings have been "terminated"—"whichever is earlier"—to file a charge with the EEOC. 42 U.S.C. 2000e-5(e)(1). In practice, however, an individual typically need only file a single charge with either the EEOC or the state or local agency. Pursuant to EEOC regulations and worksharing agreements with state and local agencies, whichever entity receives the charge will also file it with the other. See 29 C.F.R. 1601.13(a)(3) and (b)(1); EEOC, *Fair Employment Practices Agencies (FEPAs) and Dual Filing*, https://www.eeoc.gov/employees/fepa.cfm; *EEOC* v. *Commercial Office Prods. Co.*, 486 U.S. 107, 112 (1988).[1]

Upon receiving a charge, the EEOC must notify the employer and investigate the allegations. 42 U.S.C. 2000e-5(b). The EEOC has broad discretion regarding

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[1] An individual typically may amend an existing charge in certain circumstances until the EEOC concludes its processes; the amendment relates back to the date of the original filing if it is related to or grows out of the subject matter of the original charge. See 29 C.F.R. 1601.12(b), 1601.19(a), 1601.28(a)(3); see also Donald R. Livingston & Reed L. Russell, *EEOC Litigation and Charge Resolution* 161 (2d ed. 2014).

the nature and extent of its investigation. See, *e.g.*, *EEOC* v. *Sterling Jewelers Inc.*, 801 F.3d 96, 98 (2d Cir. 2015), cert. denied, 137 S. Ct. 47 (2016). It also may obtain access to "any evidence of any person being investigated" that is "relevant to the charge under investigation." 42 U.S.C. 2000e-8(a).

b. Congress originally hoped employers would comply voluntarily with Title VII. *Shell Oil Co.*, 466 U.S. at 77. As first enacted, Title VII authorized the EEOC only to investigate charges and to engage in informal conciliation and persuasion. *Occidental Life Ins. Co.* v. *EEOC*, 432 U.S. 355, 358 (1977). If those efforts failed, the EEOC lacked enforcement authority. *Id.* at 358-359. Instead, the aggrieved person could file suit against the employer. Civil Rights Act of 1964, Pub. L. No. 88-352, Tit. VII, § 706(e), 78 Stat. 260. Because in 1964 the "umbrella provision for federal question jurisdiction," 28 U.S.C. 1331, included an amount-in-controversy requirement, Congress also enacted in Title VII a separate provision granting district courts jurisdiction over "'actions brought under this subchapter.'" *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 505-506 (2006) (quoting 42 U.S.C. 2000e-5(f)(3)); see § 706(f), 78 Stat. 260. The Attorney General could intervene in cases of general public importance and could bring his own suits challenging patterns or practices of discrimination. §§ 706(e), 707(a), 78 Stat. 260-261.

By 1972, however, Congress recognized that the "failure to grant the EEOC meaningful enforcement powers ha[d] proven to be a major flaw in the operation of Title VII." *General Tel. Co. of the Nw., Inc.* v. *EEOC*, 446 U.S. 318, 325 (1980) (*General Telephone*) (citation omitted). Accordingly, Congress amended Title VII to establish the current enforcement scheme. *Occidental*

Life Ins. Co., 432 U.S. at 359; see Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103. The 1972 amendments preserved the EEOC's administrative role and retained the private right of action, but they also granted the EEOC authority to bring suit "to secure more effective enforcement of Title VII." *General Telephone*, 446 U.S. at 325; accord *Occidental Life Ins. Co.*, 432 U.S. at 368. The amendments did not alter Title VII's jurisdictional provision. Compare 42 U.S.C. 2000e-5(f)(3), with § 706(f), 78 Stat. 260.

As relevant here, Title VII currently provides that, if the EEOC finds "reasonable cause to believe that the charge is true," it must first "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. 2000e-5(b). If the EEOC is unable to secure a conciliation agreement it finds acceptable with a private employer named in a charge, the EEOC may sue the employer. 42 U.S.C. 2000e-5(f)(1). If the employer is a state or local government, the EEOC "shall refer the case to the Attorney General," who may bring a civil action. *Ibid.*[2]

If the EEOC does not find that the allegations have merit, it must dismiss the charge and notify the individual of her right to sue. 42 U.S.C. 2000e-5(b) and (f)(1). If the EEOC (or Attorney General for public employers) has neither brought suit nor reached a resolution within 180 days after the charge is filed, the individual is entitled to a right-to-sue notice upon request. 42 U.S.C. 2000e-5(f)(1); see 29 C.F.R. 1601.28(a)(2) (EEOC may

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[2] Title VII also prohibits employment discrimination by the federal government. 42 U.S.C. 2000e-16(a). A separate procedural regime, not at issue here, governs the processing and adjudication of claims by federal employees. 42 U.S.C. 2000e-16(b)-(f).

issue right-to-sue letter sooner if it certifies that it cannot complete investigation in 180 days).

2. a. In 2007, petitioner hired respondent as a supervisor in its information-technology department. Pet. App. 17a n.2. In 2010, respondent filed a complaint with petitioner's human-resources department alleging that another employee had sexually harassed and assaulted her. *Ibid.* Petitioner placed respondent on leave while it investigated her complaint. *Ibid.* According to respondent, when she returned from leave the following month, her new supervisor began retaliating against her by reducing and changing her workload. *Ibid.*; J.A. 77-78, 80.

In February 2011, respondent submitted an intake questionnaire alleging employment discrimination to the Texas Workforce Commission (State Commission), which has a worksharing agreement with the EEOC. Pet. App. 19a; J.A. 73-74. The following month, respondent filed a formal charge with the State Commission, which treated that charge as filed with the EEOC on the date respondent submitted the intake questionnaire. J.A. 80. Respondent's charge stated that "[she] believe[d] [she] ha[d] been discriminated against * * * because of [her] gender/sex, female, and in retaliation for [her] complaint of harassment." *Ibid.* She also checked boxes indicating that she was complaining of discrimination based on "Sex" and "Retaliation." *Ibid.* (capitalization altered).

b. In March 2011, petitioner requested that all information-technology employees report to work one weekend in July. Pet. App. 18a n.2. Respondent informed her supervisor she could not work that Sunday due to a religious commitment at her church, and she arranged for a replacement. *Id.* at 18a n.2, 19a. Her supervisor refused to approve her absence. *Ibid.* Respondent

attended the church event instead of coming to work, and petitioner terminated her employment. *Ibid.*

Respondent then sought to amend her pending charge by modifying her intake questionnaire. Pet. App. 19a-20a; see J.A. 71. In the field labeled "Employment Harms or Actions," she checked boxes for "Discharge" and "Reasonable Accommodations," and near the box labeled "Other" she handwrote "Religion." J.A. 101; cf. J.A. 74.[3] The State Commission later notified respondent that it had decided to dismiss her charge because "it cannot be established that the employer has discriminated against you based on Sex, Retaliation, or any other reason prohibited by the laws we enforce." J.A. 92. In December 2011, the Department of Justice issued respondent a right-to-sue letter. *Id.* at 105-106; Pet. App. 21a.

3. In 2012, respondent brought this suit against petitioner, alleging (as relevant) retaliation and religious discrimination under Title VII. Pet. App. 2a, 16a. The district court granted summary judgment for petitioner. *Id.* at 2a-3a. The court of appeals affirmed on the retaliation claim but reversed and remanded on the religious-discrimination claim. *Id.* at 3a. This Court denied certiorari. 135 S. Ct. 2804.

On remand, respondent amended her complaint to allege only religious discrimination. Pet. App. 17a-19a. Petitioner moved to dismiss for lack of jurisdiction, arguing for the first time that respondent had failed to include a claim for religious discrimination in her charge. *Id.* at 21a-22a. The district court dismissed the suit for lack of jurisdiction, concluding that the charge-filing requirement is jurisdictional and nonwaivable. *Id.* at 24a-38a.

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[3] The court of appeals reserved judgment on whether respondent successfully amended her charge to allege religious discrimination. Pet. App. 15a n.5. The United States takes no position on that issue.

4. The court of appeals again reversed. Pet. App. 1a-15a. It first concluded that the charge-filing requirement is not jurisdictional, relying on circuit precedent. *Id.* at 6a-9a. The court further explained that this Court's precedent supported that conclusion. *Id.* at 9a-12a. In *Arbaugh*, the court of appeals observed, this Court "articulated a 'readily administrable bright line'" rule, under which "'a threshold limitation'" is "'jurisdictional'" only "'[i]f the Legislature clearly states that'" it is. *Id.* at 9a-10a (quoting *Arbaugh*, 546 U.S. at 515-516). Applying that test, the court of appeals concluded that "Congress did not suggest—much less clearly state—that Title VII's administrative exhaustion requirement is jurisdictional." *Id.* at 10a.

The court of appeals concluded that failure to comply with Title VII's charge-filing requirement is an affirmative defense. Pet. App. 14a. In this case, the court found it "abundantly clear that [petitioner] ha[d] forfeited its opportunity to assert" that defense by "wait[ing] five years and an entire round of appeals all the way to the Supreme Court" before raising it. *Id.* at 14a-15a.[4]

SUMMARY OF ARGUMENT

Title VII's charge-filing requirement is a nonjurisdictional prerequisite subject to forfeiture and waiver.

A. In recent years, this Court has sharpened the distinction between jurisdictional requirements that limit federal courts' adjudicatory power and nonjurisdictional rules that merely prescribe requirements for relief or procedures for processing claims. The Court has adopted a "readily administrable bright line" test: a requirement is

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[4] Judge Jones concurred in the judgment, Pet. App. 1a n.*, but did not issue a separate opinion.

"jurisdictional" only if Congress "clearly states" that it is. *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 515-516 (2006).

Straightforward application of *Arbaugh*'s bright-line test shows that Title VII's charge-filing requirement is not jurisdictional. Neither Title VII's provision that imposes the charge-filing requirement, 42 U.S.C. 2000e-5(e)(1), nor the provision making it a precondition to filing suit, 42 U.S.C. 2000e-5(f)(1), "speak[s] in jurisdictional terms." *Arbaugh*, 546 U.S. at 515 (citation omitted). Congress established jurisdiction over Title VII suits in two other, separate provisions; neither makes jurisdiction contingent on filing a charge with the EEOC. This Court's precedent powerfully confirms that conclusion. The Court held in *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982), that the requirement to file a *timely* charge before bringing suit is not jurisdictional for reasons that apply equally to the requirement to file a charge at all. Subsequent decisions addressing other analogous requirements reinforce that conclusion.

B. Petitioner errs in contending (Br. 15-40) that the clear-statement rule is inapplicable here because the charge-filing requirement is an "exhaustion" requirement. The language and logic of this Court's decisions leave no doubt that the clear-statement rule applies to exhaustion requirements. In any event, Title VII's requirement to file a charge with the EEOC is not "in any sense an exhaustion provision." *Woodford* v. *Ngo*, 548 U.S. 81, 98 (2006). The EEOC does not render decisions on charges that courts review. Petitioner's reliance on cases addressing whether Congress intended a process of administrative adjudication and judicial review to be exclusive is therefore misplaced. Cf., *e.g.*, *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200 (1994). Congress did not channel Title VII claims to the EEOC for adjudication. It merely directed

individuals alleging employment discrimination to give the EEOC a right of first refusal before bringing suit.

C. Petitioner also errs in contending that the charge-filing requirement must be deemed jurisdictional because it advances important statutory purposes. The Court has held that a requirement is not "jurisdictional merely because it promotes important congressional objectives." *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 169 n.9 (2010). In any event, treating the charge-filing requirement as jurisdictional is unnecessary to further Congress's aims. Defendants can and do seek dismissal for failure to file a charge, giving plaintiffs a powerful incentive to comply. And the costs of deeming the charge-filing requirement jurisdictional—including burdens imposed on courts and unfair outcomes for blindsided private litigants—outweigh any benefits.

ARGUMENT

TITLE VII'S CHARGE-FILING REQUIREMENT IS NOT A JURISDICTIONAL PREREQUISITE TO SUIT

Under the "bright line" rule the Court has articulated, a requirement is jurisdictional only if Congress "clearly states" that it is. *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 515-516 (2006). That clear-statement rule resolves this case. Congress conferred jurisdiction over Title VII suits in 28 U.S.C. 1331 and 42 U.S.C. 2000e-5(f)(3). Nothing in Title VII's text or context clearly indicates that failure to comply with Title VII's charge-filing requirement divests federal courts of that jurisdiction.

Unable to satisfy the clear-statement rule, petitioner urges the Court to depart from it. Petitioner spends the bulk of its brief (Br. 15-40) inviting the Court to make an exception to *Arbaugh*'s bright-line rule for "exhaustion" requirements, Pet. Br. 15, invoking cases that addressed statutes that channeled particular claims to

an exclusive avenue of administrative and judicial review. This Court's clear-statement cases, however, foreclose petitioner's proposed carve-out. In any event, Title VII's charge-filing requirement is not an exhaustion requirement, and Title VII does not resemble statutes that require presenting a claim to an agency for a decision before seeking judicial review of that decision. Petitioner's alternative contention (Br. 27-32, 45-47) that the charge-filing requirement serves purposes that are too weighty to be waivable is also, at bottom, an invitation to make an ad hoc exception to the Court's categorical clear-statement test. The Court should reject petitioner's invitations to blur *Arbaugh*'s bright-line rule.

A. Under This Court's Clear-Statement Rule, Title VII's Charge-Filing Requirement Is Not Jurisdictional Because Congress Did Not Clearly State Otherwise

1. A prerequisite to relief is not jurisdictional unless Congress clearly states that it is

a. "Characterizing a rule as jurisdictional renders it unique in our adversarial system" and carries significant consequences. *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013) (*Auburn*). A jurisdictional defect "can be raised at any time, even by a party that once conceded the tribunal's subject-matter jurisdiction," in turn causing a "waste of adjudicatory resources" and "disturbingly disarm[ing] litigants." *Ibid.* And such a defect must be raised by courts *sua sponte*, even on appeal. *Arbaugh*, 546 U.S. at 515. Confusion about the meaning of "jurisdiction" exacerbates those consequences. "'Jurisdiction,' this Court has observed, 'is a word of many, too many, meanings.'" *Id.* at 510 (quoting *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 90 (1998)). Courts "ha[ve] sometimes been profligate in [their] use of the

term" and historically were "less than meticulous" in distinguishing jurisdictional limits from other prerequisites to relief. *Id.* at 510-511.

"This Court has endeavored in recent years to 'bring some discipline' to the use of the term 'jurisdictional'" by "press[ing] a stricter distinction between truly jurisdictional rules, which govern 'a court's adjudicatory authority,' and nonjurisdictional 'claim-processing rules,' which do not." *Gonzalez* v. *Thaler*, 565 U.S. 134, 141 (2012) (citations omitted). In *Arbaugh*, it adopted a "readily administrable bright line" test, 546 U.S. at 516, which it has repeatedly reaffirmed: "A rule is jurisdictional 'if the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional.'" *Hamer* v. *Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 20 n.9 (2017) (quoting *Gonzalez*, 565 U.S. at 141, in turn quoting *Arbaugh*, 546 U.S. at 515) (brackets omitted).

Congress need not "incant magic words" to supply a clear statement. *United States* v. *Kwai Fun Wong*, 135 S. Ct. 1625, 1632 (2015) (citation omitted). As in construing any statute, courts should consider the "[s]tatutory context," *id.* at 1633, "including this Court's interpretation of similar provisions in many years past," *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 168 (2010); see *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 133-139 (2008); *Bowles* v. *Russell*, 551 U.S. 205, 208-215 (2007). But "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Wong*, 135 S. Ct. at 1632. The Court has thus aptly labeled *Arbaugh*'s test a "clear-statement rule." *Hamer*, 138 S. Ct. at 20 n.9; accord *Wong*, 135 S. Ct. at 1632; *Gonzalez*, 565 U.S. at 142.

Many of the Court's cases applying the clear-statement rule have addressed time limits for pursuing administrative or judicial relief. *E.g.*, *Wong*, 135 S. Ct. at 1631-1633; *Auburn*, 568 U.S. at 153-155; *Henderson* v. *Shinseki*, 562 U.S. 428, 441 (2011). In that setting, it is especially "clear and easy to apply: If a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional; otherwise, the time specification fits within the claim-processing category." *Hamer*, 138 S. Ct. at 20 (citation omitted). But *Arbaugh*'s "clear-statement rule" applies equally "[i]n cases not involving the timebound transfer of adjudicatory authority from one Article III court to another." *Id.* at 20 n.9. The Court has applied it to (and found nonjurisdictional) Title VII's provision limiting its coverage to employers with at least 15 employees, *Arbaugh*, 546 U.S. at 510-516; the requirement to register a copyright (or be refused registration) before suing for infringement, *Reed Elsevier*, 559 U.S. at 160-169 (addressing 17 U.S.C. 411(a)); the requirement that only objections to an Environmental Protection Agency clean-air regulation "raised with reasonable specificity" during the rulemaking may be asserted in litigation, *EPA* v. *EME Homer City Generation, L.P.*, 572 U.S. 489, 511-512 (2014) (citation omitted); the requirement that parties to certain railroad labor disputes "attempt settlement 'in conference'" before arbitrating, *Union Pac. R.R.* v. *Brotherhood of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment*, 558 U.S. 67, 81-85 (2009) (*Union Pacific*); and the requirement that a certificate of appealability in habeas proceedings specify the issue on which the court finds a substantial showing of the denial of a constitutional right, *Gonzalez*, 565 U.S. at 140-145. The test

also applies regardless of whether a requirement is "considered an element of" the plaintiff's "claim" or instead a "prerequisite to initiating a lawsuit." *Reed Elsevier*, 559 U.S. at 165-166.

b. Concluding that a requirement is nonjurisdictional means that, like most other requirements or defenses, it "can be waived or forfeited by an opposing party." *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019); see *Kontrick* v. *Ryan*, 540 U.S. 443, 456 (2004). And because nonjurisdictional requirements do not implicate courts' authority, courts "are under no *obligation* to raise" a nonjurisdictional issue *sua sponte*. *Day* v. *McDonough*, 547 U.S. 198, 205 (2006); cf. *Arbaugh*, 546 U.S. at 514.

Deeming a requirement nonjurisdictional, however, "does not render it malleable in every respect." *Nutraceutical*, 139 S. Ct. at 714. Although this case does not present the question, some nonjurisdictional requirements are subject to exceptions even when timely asserted—such as equitable tolling of limitations periods—while others are "'mandatory,'" *i.e.*, "'unalterable' if properly raised by an opposing party." *Ibid.* (citation omitted); see *id.* at 714-715 (deadline for appealing class certification is nonjurisdictional but mandatory and immune to equitable tolling); *Hallstrom* v. *Tillamook Cnty.*, 493 U.S. 20, 25-31 (1989) (requirement to give notice to certain entities before suing was mandatory, regardless of whether it was jurisdictional). Moreover, although federal courts are "not obliged" to address mandatory but nonjurisdictional defects on their own initiative when the parties do not raise them, they may have discretion to do so. *Day*, 547 U.S. at 209 ("[D]istrict courts are permitted, but not obliged, to

consider, *sua sponte*, the timeliness of a state prisoner's habeas petition.").

2. Title VII's text and context do not clearly indicate that the charge-filing requirement is jurisdictional

a. Straightforward application of *Arbaugh*'s bright-line rule demonstrates that Title VII's charge-filing requirement is not a jurisdictional prerequisite to suits brought under 42 U.S.C. 2000e-5(f)(1), and therefore is subject to ordinary principles of forfeiture and waiver. Title VII's text contains no "clear statement" that the requirement limits subject-matter jurisdiction. *Wong*, 135 S. Ct. 1632. The provision that requires filing a charge (and sets the deadline) "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Id.* at 1633 (quoting *Arbaugh*, 546 U.S. at 515). That provision, 42 U.S.C. 2000e-5(e)(1), states in relevant part: "A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred," or within 300 days if the individual first sought relief from a state or local agency. *Ibid.* That text and the rest of the provision address only proceedings before the EEOC, not the scope of courts' adjudicatory authority.

Likewise, the provision on which petitioner focuses, 42 U.S.C. 2000e-5(f)(1), says nothing about the "power of the court" to decide Title VII claims, but addresses only the "rights or obligations of the parties." *Reed Elsevier*, 559 U.S. at 161 (citations omitted). Section 2000e-5(f)(1) provides (with irrelevant exceptions) that, "[i]f within thirty days after a charge is filed with the Commission * * * , the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent" other than

state or local governments. 42 U.S.C. 2000e-5(f)(1). It similarly authorizes the Attorney General to sue if the defendant is a state or local government. *Ibid.* It further provides that, "[i]f a charge filed with the Commission * * * is dismissed by the Commission"—or if, within a specified period, neither the EEOC nor the Attorney General has filed suit—"a civil action may be brought against the respondent named in the charge * * * by the person claiming to be aggrieved." *Ibid.*

Section 2000e-5(f)(1)'s text thus addresses who has a cause of action to sue for a Title VII violation, and against whom. See *Thompson* v. *North Am. Stainless, LP*, 562 U.S. 170, 175-176 (2011). "[A] question whether Congress intended to allow a certain cause of action against" a particular defendant "is not a question of jurisdiction"; it is a merits issue. *Air Courier Conference of Am.* v. *American Postal Workers Union, AFL-CIO*, 498 U.S. 517, 523 n.3 (1991); accord *Steel Co.*, 523 U.S. at 92. Section 2000e-5(f)(1) answers the question whether Congress "inten[ded] to create not just a private right but also a private remedy," *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001)—not the distinct question whether a court has the power to "proceed at all," *Steel Co.*, 523 U.S. at 94 (citation omitted).

Title VII's text contrasts sharply with the text of requirements that have satisfied the clear-statement test. In *Rockwell International Corp.* v. *United States*, 549 U.S. 457 (2007), the Court addressed the provision of the False Claims Act, 31 U.S.C. 3729 *et seq.*, withdrawing jurisdiction over claims based on public disclosures. 549 U.S. at 467-470. The Act provided that "[n]o court shall have jurisdiction over an action" by a private plaintiff "based upon the public disclosure of allegations or transactions" in certain contexts "unless" the plaintiff

"is an original source." 31 U.S.C. 3730(e)(4)(A) (2006). The Court held that "the jurisdictional nature of the original-source requirement is clear *ex visceribus verborum*." *Rockwell Int'l*, 549 U.S. at 468. And in *Patchak* v. *Zinke*, 138 S. Ct. 897 (2018), the plurality concluded Congress had "use[d] jurisdictional language" by "stat-[ing] that an 'action' relating to" certain property "'shall not be filed or maintained in a Federal court and shall be promptly dismissed.'" *Id.* at 904-905 (opinion of Thomas, J.) (citation omitted). Title VII's provisions at issue here bear no resemblance to those statutes. They neither refer to the authority of courts nor mandate dismissal of actions.

Moreover, the charge-filing requirement itself is a paradigmatic claim-processing rule. It requires individuals alleging discrimination by a private, state-government, or local-government employer to submit information to an agency and then wait a specified period before bringing suit unless the agency itself sues. That is a quintessential requirement for the processing of claims. Cf. *Patchak*, 138 S. Ct. at 906 (plurality opinion) (listing "filing deadline[s]" and "exhaustion requirement[s]" compelling parties to "'take certain procedural steps at certain specified times'" as classic "'claim-processing rule[s]'" (citation omitted)).

b. Statutory context confirms this conclusion. Congress conferred federal-court jurisdiction over Title VII suits in two other, separate provisions. First, 28 U.S.C. 1331 "gives federal courts subject-matter jurisdiction over all civil actions 'arising under' the laws of the United States," and "Title VII actions fit that description." *Arbaugh*, 546 U.S. at 503 (citation omitted). Second, Congress included an additional grant of jurisdic-

tion when it enacted Title VII because, in 1964, "[Section] 1331's umbrella provision for federal-question jurisdiction contained an amount-in-controversy limitation" that might "impede an employment-discrimination complainant's access to a federal forum." *Id.* at 505. That provision, codified at 42 U.S.C. 2000e-5(f)(3), provides: "Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter." *Ibid.* It then addresses venue for such suits. *Ibid.* Since the elimination of Section 1331's amount-in-controversy requirement, Section 2000e-5(f)(3) "has served simply to underscore Congress' intention to provide a federal forum for the adjudication of Title VII claims." *Arbaugh*, 546 U.S. at 506.

Neither Section 1331 nor Section 2000e-5(f)(3) makes jurisdiction turn on whether Title VII's charge-filing requirement has been satisfied. Neither "specifies any threshold ingredient akin to 28 U.S.C. § 1332's monetary floor." *Arbaugh*, 546 U.S. at 515. Although Section 2000e-5(f)(3) confers jurisdiction only over "actions *brought under* [Title VII]," 42 U.S.C. 2000e-5(f)(3) (emphasis added), that limitation is best understood—like Section 1331's "arising under" requirement—to require that a complaint assert a "colorable" Title VII claim that is not "'wholly insubstantial and frivolous.'" *Arbaugh*, 546 U.S. at 513 n.10 (quoting *Bell* v. *Hood*, 327 U.S. 678, 682-683 (1946)) (addressing Section 1331); see *Steel Co.*, 523 U.S. at 89. Moreover, as this Court has repeatedly held in construing Title VII and other statutes, the fact that Congress addressed jurisdiction in "an entirely separate provision" confirms Section 2000e-5(e)(1) and (f)(1) are *not* jurisdictional. *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982); see

Arbaugh, 546 U.S. at 515; *Wong*, 135 S. Ct. at 1633; *Reed Elsevier*, 559 U.S. at 164-165.

c. "[C]ontext" also "includ[es] this Court's interpretations of similar provisions in many years past," which can be "probative of Congress' intent." *Hamer*, 138 S. Ct. at 20 n.9 (brackets and citation omitted). This Court's precedent powerfully reinforces the most natural reading of the statute. Long before *Arbaugh*, this Court held in *Zipes* that Title VII's requirement to "fil[e] a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court" for reasons that apply equally to the charge-filing requirement itself. 455 U.S. at 393-394; see *id.* at 393-398.

In *Zipes*, the Court reasoned that "[t]he provision specifying the time for filing charges with the EEOC," Section 2000e-5(e)(1), "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." 455 U.S. at 394; see *id.* at 394 n.10. The Court also explained that the provision requiring a timely charge is "entirely separate" from "[t]he provision granting district courts jurisdiction under Title VII," Section 2000e-5(f)(3), which "does not limit jurisdiction to those cases in which there has been a timely filing with the EEOC." *Id.* at 393-394; see *id.* at 393 n.9. The same is equally true of the requirement to file a charge, which appears in the same provision.

Zipes further reasoned that *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), foreclose deeming the timely-charge requirement jurisdictional. See *Zipes*, 455 U.S. at 396-397. In *Albemarle Paper*, the Court "reject[ed] th[e] contention" that unnamed members of a Title VII plaintiff class "who ha[d] not themselves filed charges with the EEOC" could not receive

backpay. 422 U.S. at 414 n.8. In *Franks*, it again "reject[ed]" the argument that unnamed class members who "had not filed administrative charges under the provisions of Title VII with the [EEOC]" could not obtain seniority relief. 424 U.S. at 771. "If the timely-filing requirement were to limit the jurisdiction of the District Court to those claimants who have filed timely charges with the EEOC," *Zipes* held, the courts "would have been without jurisdiction to adjudicate the claims of those who had not filed as well as without jurisdiction to award them" relief. 455 U.S. at 397. So too here, the necessary implication of *Franks* and *Albemarle Paper* is that the failure to file a charge at all does not divest a court of jurisdiction.

Moreover, as *Zipes* explained, in both *Franks* and *Albemarle Paper* the Court recognized that "Congress had approved the Court of Appeals cases that awarded relief to class members who had not exhausted administrative remedies before the EEOC." 455 U.S. at 397. "[I]n doing so," *Zipes* concluded, "Congress necessarily adopted the view that the provision for filing charges with the EEOC should not be construed to erect a jurisdictional prerequisite to suit." *Ibid.*; see *Franks*, 424 U.S. at 771; *Albemarle Paper*, 422 U.S. at 414 n.8. Petitioner dismisses (Br. 48-49) *Franks* and *Albemarle Paper* as confined to the class-action context. But this Court in *Zipes* rejected that crabbed reading of those decisions by concluding that their logic shows the timely-charge requirement itself is nonjurisdictional. See 455 U.S. at 397.

Petitioner cites two earlier cases that purportedly "held that the filing of 'charges of employment discrimination with the Commission' is one of 'the jurisdictional prerequisites to a federal action.'" Pet. Br. 48 (quoting *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 798

(1973), and citing *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 47 (1974)). But *Zipes* dismissed those and other "scattered references to the timely-filing requirement as jurisdictional" because "the legal character of the requirement was not at issue in those cases," and later cases had not used the same label. 455 U.S. at 395; see *id.* at 395 n.12. Those dicta are at most "'drive-by jurisdictional rulings' that should be accorded 'no precedential effect' on the question whether the federal court had authority to adjudicate the claim in suit." *Arbaugh*, 546 U.S. at 511 (quoting *Steel Co.*, 523 U.S. at 91).

Beyond the Title VII context, the Court has held that analogous requirements are not jurisdictional for reasons similar to those applicable here. For example, in *Reed Elsevier*, the Court held that the requirement that a person must obtain (or seek and be refused) registration of a copyright from a federal agency before suing for infringement is not jurisdictional. 559 U.S. at 160-169. The Court noted that it had previously treated as nonjurisdictional "other types of threshold requirements that claimants must complete, or exhaust, before filing a lawsuit," such as the administrative exhaustion requirement of 42 U.S.C. 1997e(a) for certain suits by prisoners. 559 U.S. at 166; see *id.* at 166 n.6 (citing *Jones* v. *Bock*, 549 U.S. 199, 211 (2007), and *Woodford* v. *Ngo*, 548 U.S. 81, 93 (2006)); *EME Homer City*, 572 U.S. at 511-512 (applying *Arbaugh* to requirement to raise objection to regulation with "reasonable specificity" during rulemaking); *Union Pacific*, 558 U.S. at 80-85 (applying *Arbaugh* to hold nonjurisdictional a statutory requirement that parties to railway-labor disputes attempt to "conferenc[e]" certain disputes before arbitrating).

d. Petitioner and its amici suggest that Title VII's charge-filing requirement is jurisdictional because it

conditions a waiver of state sovereign immunity. Pet. Br. 46; NCSL Amicus Br. 22-29. That contention lacks merit. To be sure, Congress's decision to condition a waiver of *federal* sovereign immunity on satisfying a particular requirement may warrant deeming it jurisdictional. Cf. *United States* v. *Dalm*, 494 U.S. 596, 608-610 (1990). But Section 2000e-5(e)(1) and (f)(1) do not apply to suits against the federal government. Although Section 2000e-5(e)(1) and (f)(1) apply to suits against States—as well as nonimmune private and local-government defendants—the fact that a State could face liability under those general provisions cannot justify deeming the charge-filing requirement jurisdictional. Otherwise, any prerequisite to a Title VII suit applicable to actions against States and other defendants alike—including the timely-charge and employee-numerosity requirements—would presumably be jurisdictional. That cannot be squared with this Court's decisions in *Zipes* and *Arbaugh*.

In contrast, sovereign-immunity considerations are relevant to a separate provision of Title VII (not at issue here) that addresses claims of employment discrimination by federal-government employers. See 42 U.S.C. 2000e-16. Section 2000e-16 establishes a distinct procedure for the adjudication of such claims. "[C]omplaint[s] of discrimination" are first presented to the employing agency, and the agency's action may then be appealed to the EEOC; an employee or applicant who is "aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5." 42 U.S.C. 2000e-16(c). As petitioner noted at the petition stage, although the EEOC has long maintained that Section 2000e-5's charge-filing requirement is not jurisdictional in suits

against private or state or local government employers, Pet. 19 & n.6, the government has argued that the failure of a person alleging employment discrimination by the federal government to file a complaint in compliance with Section 2000e-16 is a jurisdictional bar, Pet. 18 & n.5.

Sections 2000e-5 and 2000e-16 differ in significant respects, including that Section 2000e-16 implicates federal sovereign immunity in every application, and that it authorizes suits only by a person "aggrieved by the final disposition of his complaint," which presupposes that a complaint was filed and "dispos[ed] of" by the EEOC, 42 U.S.C. 2000e-16(c). In light of those differences, and because Section 2000e-16 does not apply here, this case provides no occasion to address whether Section 2000e-16(c)'s charge-filing requirement is jurisdictional or otherwise nonwaivable. But if the Court were to conclude in an appropriate case that the differences between Sections 2000e-5 and 2000e-16 are insufficient to warrant classifying them differently, it should conclude that neither is jurisdictional.

B. Petitioner's Contention That Title VII's Charge-Filing Requirement Is An "Exhaustion" Rule Exempt From The Clear-Statement Rule Lacks Merit

Petitioner cannot show that Title VII contains the requisite clear statement that the charge-filing requirement is jurisdictional. Petitioner accordingly devotes most of its argument to urging an exception to *Arbaugh*'s bright-line rule for "exhaustion" requirements—*i.e.*, requirements to present claims to, or exhaust remedies before, an agency. Pet. Br. 40. Petitioner attempts to ground that exception in this Court's cases addressing statutory schemes that channel review of particular claims through an exclusive process of administrative and judicial review. In those regimes, petitioner argues, the

provisions precluding review by other means "[t]ypically" *are* jurisdictional. Pet. Br. 18 (emphasis omitted).

That contention lacks merit. There is no exception to *Arbaugh* for exhaustion requirements. Congress of course can make an exhaustion requirement jurisdictional, and this Court has held that Congress has done so in certain statutes. See, *e.g.*, *Mathews* v. *Eldridge*, 424 U.S. 319, 328 (1976). But petitioner identifies no basis for exempting such requirements from *Arbaugh*'s rule. In any event, Title VII's charge-filing requirement is not an exhaustion requirement, and the Court's cases addressing channeling review to an exclusive process are inapposite.

1. In *Arbaugh* and later cases, the Court stated the clear-statement rule in categorical terms, with no suggestion that a broad subset of requirements is exempt. See *Arbaugh*, 546 U.S. at 515-516; pp. 12-14, *supra*. The Court has explained that *Arbaugh*'s "clear statement rule" applies across the board—governing "time bars," *Wong*, 135 S. Ct. at 1632, and other requirements alike, see *Hamer*, 138 S. Ct. at 20 n.9 ("clear-statement rule" extends to "cases not involving the timebound transfer of adjudicatory authority from one Article III court to another"). The Court has in fact applied *Arbaugh*'s rule to requirements to present matters to agencies prior to litigating in a particular forum. See *EME Homer City*, 572 U.S. at 511-512; *Reed Elsevier*, 559 U.S. at 160-169; cf. *Union Pacific*, 558 U.S. at 81-85. And it has held that even an explicit statutory requirement to "'exhaust[]'" claims before administrative adjudicators is not "jurisdictional," *Ngo*, 548 U.S. at 88, 93 (quoting 42 U.S.C. 1997e(a)), and instead is an affirmative defense, *Jones*, 549 U.S. at 211-217; see *Patchak*, 138 S. Ct. at 906 (plurality opinion).

Adopting an exception to *Arbaugh*'s rule for exhaustion requirements also would undermine the rule's central purpose. Injecting a threshold, '*Arbaugh* Step Zero' inquiry would blur the "readily administrable bright line" *Arbaugh* drew and reintroduce some of the uncertainty and confusion that the clear-statement rule eliminates. 546 U.S. at 516. And it would defeat the Court's goal of "leav[ing] the ball in Congress' court," which requires providing clear background rules against which Congress can legislate. *Id.* at 515.

To be sure, "Congress could make" exhaustion requirements jurisdictional, "just as it has made an amount-in-controversy threshold an ingredient of subject-matter jurisdiction" in 28 U.S.C. 1332. *Arbaugh*, 546 U.S. at 514-515; see *id.* at 515 n.11 (listing examples of statutes that make particular requirements jurisdictional). And this Court has held that some requirements to present claims to agencies are jurisdictional in character. In *Eldridge*, it concluded that the statutory requirement to present a Social Security claim first to the agency is a "'jurisdictional'" and "nonwaivable" prerequisite to judicial review under 42 U.S.C. 405(g), reasoning that "[a]bsent such a claim there can be no 'decision'" that a court can review. 424 U.S. at 328; cf. 42 U.S.C. 2000e-16(c) (permitting Title VII suit by federal employee "aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint," which presupposes that complaint was filed and disposed of). That conclusion is reinforced in the Social Security context by the fact that 42 U.S.C. 405(h) expressly bars jurisdiction under any other statute, including 28 U.S.C. 1331, to review Social Security determinations, which necessarily means 42 U.S.C. 405(g) provides the only avenue to court. But precisely

because Congress can make an exhaustion requirement jurisdictional if it wishes, there is no sound basis for exempting such requirements from the ordinary rule.

2. In any event, petitioner's argument fails on its own terms because Title VII's charge-filing requirement is not "in any sense an exhaustion provision." *Ngo*, 548 U.S. at 98 (rejecting analogy between exhaustion requirement of 42 U.S.C. 1997e(a) for certain suits by prisoners and Title VII's charge-filing requirement). Unlike the statutory schemes in the cases petitioner cites (Br. 18-23)—in which a claimant must submit a claim to an agency, which then renders a decision that is subject to judicial review—Title VII does not empower the EEOC to issue decisions adjudicating claims and awarding relief that courts then review. The statute directs the EEOC to investigate allegations of discrimination, to determine whether reasonable cause exists to believe that the allegations are true, and to attempt to conciliate disputes. 42 U.S.C. 2000e-5(b) and (f)(1). If those efforts fail, the EEOC cannot issue a self-executing ruling that parties must obey unless it is overturned by a court.

Instead, if the EEOC believes a claim is meritorious, it must seek judicial relief. And if a suit is brought—whether by the EEOC, the Attorney General, or a private party—the court does not review the EEOC's action; it considers the claim of employment discrimination de novo. See *Chandler* v. *Roudebush*, 425 U.S. 840, 844-845 (1976). Moreover, a private suit can proceed even if the EEOC does not act at all. An individual alleging discrimination is entitled to sue 180 days after filing a charge even if the EEOC's investigation is ongoing. 42 U.S.C. 2000e-5(f)(1).

The Title VII regime thus does not resemble the "statutory scheme[s] of administrative and judicial review" petitioner surveys (Br. 20), in which Congress has channeled review of certain claims to agencies and restricted judicial review accordingly. See Pet. Br. 18-23. Instead, individuals alleging discrimination merely must give the EEOC a right of first refusal before bringing their own suits. This Court's cases addressing whether it is "'fairly discernible'" that Congress intended a particular avenue of administrative adjudication and judicial review to be "exclusive[]" are therefore inapposite. *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 10 (2012); see *id.* at 8-15; *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 207-216 (1994). Congress did not channel Title VII claims to the EEOC for adjudication; it left the adjudication of such claims to federal courts. Respondent is not seeking to bypass an exclusive avenue for adjudicating claims by litigating in a forum different than the one Congress specified. She brought suit in district court, as Title VII directs. The question is whether a failure to comply with a particular prerequisite to seeking review in that forum has jurisdictional consequences.

The charge-filing requirement also does not implicate many of the same concerns that underlie typical exhaustion requirements. It does not guard against usurpation of "administrative agency authority" to decide disputes or to "correct [an agency's] own mistakes." *Ngo*, 548 U.S. at 89 (citation omitted). Nor does it "produce a useful record for subsequent judicial consideration." *Ibid.* (citation omitted). Courts in Title VII suits do not sit in review of the EEOC's reasonable-cause determinations. They simply decide the plaintiff's claims.

3. Even if petitioner could establish that exhaustion requirements are exempt from *Arbaugh* and that the requirement to file a charge is an exhaustion requirement, that still would not support petitioner's position here. Respondent undisputedly filed a charge with the EEOC. Petitioner's contention (Br. 54-56) is that respondent's charge was inadequate because it omitted the specific allegation (of religious discrimination) on which respondent is now pursuing relief in court. Because petitioner "forfeited" any defense that respondent failed to satisfy the charge-filing requirement, Pet. App. 15a, petitioner must show that Congress stripped federal-court jurisdiction over any particular allegation not included in an otherwise-proper charge.

Petitioner has not made that showing. Indeed, where a statute does not expressly preclude consideration by a court of matters not presented in a particular way to an agency, courts are reluctant to read in an "issue exhaustion" requirement unless the agency proceedings are "adversarial" in nature. *Sims* v. *Apfel*, 530 U.S. 103, 110 (2000); see *id.* at 107-110. Courts should be all the more reluctant to read in a *jurisdictional* issue-exhaustion rule where Congress has not imposed one. It is thus very unlikely that Congress intended the omission of particular allegations in an EEOC charge to have jurisdictional consequences. Proceedings before the EEOC are not adversarial. Moreover, whatever specific allegations a charge makes, the EEOC conducts its own investigation and may bring suit challenging any violations it discovers in the course of a reasonable investigation. See *General Tel. Co. of the Nw., Inc.* v. *EEOC*, 446 U.S. 318, 331 (1980); see also p. 31, *infra*. Title VII therefore cannot fairly be construed as

imposing a jurisdictional bar to courts' considering particular allegations not sufficiently articulated in a charge.

C. The Statutory Purposes Do Not Require Treating Title VII's Charge-Filing Requirement As Jurisdictional

Petitioner also argues (Br. 27-32, 45-47) that the charge-filing requirement should not be deemed jurisdictional because it serves important statutory purposes. But a requirement should not "be ranked as jurisdictional merely because it promotes important congressional objectives." *Reed Elsevier*, 559 U.S. at 169 n.9. In any event, Congress's purposes do not require deeming the charge-filing requirement jurisdictional.

1. The EEOC's role in investigating and conciliating discrimination claims is a "key component of the statutory scheme." *Mach Mining, LLC* v. *EEOC*, 135 S. Ct. 1645, 1651 (2015). And the charge-filing requirement serves important goals. A charge enables the EEOC to investigate and attempt to resolve claims or, failing that, to sue. The charge-filing requirement also was designed—as part of a legislative compromise—to *limit* the EEOC's authority by confining its investigations primarily to matters "relevant" to charges it receives, 42 U.S.C. 2000e-8(a), nearly all of which are filed by private parties. See *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 64 (1984).

Petitioner is mistaken, however, in assuming (Br. 27-32, 45-47) that, if the charge-filing requirement is nonjurisdictional, individuals alleging discrimination will cease filing charges and will instead proceed immediately to court, circumventing the EEOC. Deeming the charge-filing requirement nonjurisdictional does not excuse individuals from filing charges. It means the defense of failure to file a proper charge can be forfeited or waived, and courts need not raise it *sua sponte*. See

pp. 14-15, *supra*. But if a defendant timely raises a valid defense that the plaintiff failed to file a proper charge, "a court will usually dismiss a complaint for failure to do so." *Mach Mining*, 135 S. Ct. at 1651.

Nor is there any reason to suppose that defendants will ordinarily be unable to raise that defense. An employer sued under Title VII will know whether a charge was previously filed because the EEOC must "serve a notice of the charge" on the employer "within ten days" after it is filed, 42 U.S.C. 2000e-5(b), and the EEOC ordinarily serves a copy of the actual charge, 29 C.F.R. 1601.14(a). If no charge was filed, the employer has every reason to raise that failure as a defense, at least where (as is often true) the time for filing (or amending) a charge has expired.

Individuals alleging discrimination, in turn, have a powerful incentive to file charges in the first instance to avoid having their suits dismissed, in addition to hoping that the EEOC might help mediate a resolution or bring its own suit. Petitioner points to no evidence that individuals have bypassed the EEOC process entirely in the eight circuits that have held the charge-filing requirement nonjurisdictional. And although the EEOC does not publish circuit-specific statistics, the number of Title VII charges received nationwide has remained relatively consistent for decades.[5]

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[5] The EEOC received slightly more charges in FY2017 (59,466) than in FY1997 (58,615). EEOC, *Title VII of the Civil Rights Act of 1964 Charges, FY 1997-FY 2017*, https://www.eeoc.gov/eeoc/statistics/enforcement/titlevii.cfm. The number has fluctuated but has ranged between approximately 56,000 and 73,000 throughout (not counting charges filed with state or local agencies). *Ibid.*

To the extent petitioner fears that deeming the charge-filing rule nonjurisdictional will induce individuals alleging discrimination to file charges omitting specific *allegations* that they later attempt to raise in court, that fear is unfounded. An individual who enlists the EEOC's assistance (and hopes it will bring its own suit) has little incentive to leave potentially viable claims behind. And if the EEOC brings suit, it is not confined to the allegations of discrimination identified in the original charge. See *General Telephone*, 446 U.S. at 331.

If an individual nevertheless files a charge and then brings suit alleging different or additional claims, a defendant may seek dismissal of those claims. An employer ordinarily will be well positioned to do so; it will be aware of the nature of the allegations asserted in the charge. To be sure, lower courts have concluded that a private plaintiff may assert in litigation any allegation that is "like or reasonably related" to those in the initial charge. *E.g.*, *Arizona ex rel. Horne* v. *Geo Grp., Inc.*, 816 F.3d 1189, 1204-1205 (9th Cir. 2016), cert. denied, 137 S. Ct. 623 (2017). That reflects the fundamental nature of a charge, which marks the *beginning* of the process of investigating allegations, not the *end*. But if a plaintiff asserts a claim that is not reasonably related to the charge, the employer can seek dismissal. Plaintiffs have little reason to risk having their claims rejected in court by holding them back from the EEOC.

Petitioner's position thus principally matters only where either (A) the employer itself did not notice the difference between the charge and the complaint, or (B) the employer knew of the difference but decided not to raise it promptly as a defense. It is highly unlikely that Congress intended to strip jurisdiction over a claim in either circumstance. If even the employer does not

detect a deficiency in the allegations of a charge, it is unlikely the individual (often a layperson) recognized it either. And if a defendant deliberately chooses to bypass an available defense that the charge omitted a particular allegation, it is unrealistic to suppose that Congress intended to bar federal courts from entertaining the claim. That outcome would do little to advance the charge-filing requirement's purposes. Although the EEOC would have been unable to attempt conciliation of the claim, the likelihood of voluntary resolution in that scenario is presumably low. And although the EEOC would have missed the chance to bring its own suit, a private suit already has been brought, and the EEOC can seek leave to intervene if it deems the suit "of general public importance." 42 U.S.C. 2000e-5(f)(1).

2. Any marginal benefit that deeming the charge-filing requirement jurisdictional would generate is outweighed by the costs for courts and litigants. Labeling the charge-filing requirement jurisdictional matters most in cases where a defendant does not raise as a defense the plaintiff's failure to include a particular allegation in her EEOC charge; the plaintiff prevails on the merits to some extent, either by proving her claim or overcoming an interlocutory hurdle; and then the defendant seeks to undo that result by belatedly contesting jurisdiction (or a court is compelled to do so *sua sponte*). That outcome is unfair to a plaintiff who has achieved full or partial success litigating the merits, and it diminishes defendants' incentive to review a plaintiff's complaint carefully and raise any issues regarding the charge promptly. In this case, petitioner failed to raise its objection to respondent's charge until years into the litigation, after this Court denied certiorari in a prior appeal. Pet. App. 14a-15a.

Deeming the charge-filing requirement jurisdictional also would be "waste[ful] of adjudicatory resources" of courts. *Auburn*, 568 U.S. at 153. It would force trial and appellate courts to address the adequacy of the charge's allegations at the threshold, even when the parties do not raise the issue, and even where a claim clearly fails on the merits. See *Steel Co.*, 523 U.S. at 94. And if a defect in the charge surfaces late in the litigation or on appeal, it renders nugatory the time and effort spent by courts until that point.

Finally, although Title VII uses mandatory language in requiring a charge before suit is brought, 42 U.S.C. 2000e-5(e)(1) and (f)(1) (charge "shall be filed" before bringing suit), this case does not present the separate question whether any exceptions exist. Exceptions (if any) to procedural requirements should be applied "sparingly," *National R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 113 (2002), and excusing a failure to comply with the charge-filing requirement might be appropriate at most only in limited circumstances. For example, courts have recognized exceptions where an agency official erroneously refused to accept a charge or amendment or misled the individual alleging discrimination. See, *e.g.*, *McKee* v. *McDonnell Douglas Tech. Servs. Co.*, 700 F.2d 260, 263-264 (5th Cir. 1983); *Josephs* v. *Pacific Bell*, 443 F.3d 1050, 1054 (9th Cir. 2006). "[A]ffirmative misconduct on the part of a defendant" that "lulled the plaintiff into inaction" might also warrant an exception. *Baldwin Cnty. Welcome Ctr.* v. *Brown*, 466 U.S. 147, 151 (1984) (per curiam). The existence of any such exceptions is not presented here because petitioner "forfeited" the defense that respondent failed to comply with the charge-filing requirement. Pet. App. 15a. But the relevant point is that petitioner's position

would take off the table entirely any possibility of exceptions tailored to address such rare circumstances.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 1331 provides:

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

2. 42 U.S.C. 2000e-5 provides:

Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the

Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the

persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed

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[1] So in original. Probably should be subsection "(b)".

statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the

alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by applica-

tion of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), of this section the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or polit-

ical subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the

commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which

the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have tak-

en the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing

party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

3. 42 U.S.C. 2000e-6 provides:

Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the

acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) **Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission**

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

4. 42 U.S.C. 2000e-16 provides:

Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment

who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating

officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) **Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant**

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the

head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..[1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) of this title applicable to compensation discrimination

Section 2000e-5(e)(3) of this title shall apply to complaints of discrimination in compensation under this section.

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[1] So in original.

5. 29 C.F.R. 1601.12 provides:

Contents of charge; amendment of charge.

(a) Each charge should contain the following:

(1) The full name, address and telephone number of the person making the charge except as provided in § 1601.7;

(2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See § 1601.15(b);

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be; and

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging

additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred.

6. 29 C.F.R. 1601.13 provides:

Filing; deferrals to State and local agencies.

(a) *Initial presentation of a charge to the Commission.* (1) Charges arising in jurisdictions having no FEP agency are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(2) A jurisdiction having a FEP agency without subject matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) is equivalent to a jurisdiction having no FEP agency. Charges over which a FEP agency has no subject matter jurisdiction are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(3) Charges arising in jurisdictions having a FEP agency with subject matter jurisdiction over the charges are to be processed in accordance with the Commission's deferral policy set forth below and the procedures in paragraph (a)(4) of this section.

(i) In order to give full weight to the policy of section 706(c) of title VII, which affords State and local fair employment practice agencies that come within the

provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by title VII, the ADA, or GINA and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to State and local agencies as is permitted by law and as is practicable.

(ii) Section 706(c) of title VII grants States and their political subdivisions the exclusive right to process allegations of discrimination filed by a person other than a Commissioner for a period of 60 days (or 120 days during the first year after the effective date of the qualifying State or local law). This right exists where, as set forth in § 1601.70, a State or local law prohibits the employment practice alleged to be unlawful and a State or local agency has been authorized to grant or seek relief. After the expiration of the exclusive processing period, the Commission may commence processing the allegation of discrimination.

(iii) A FEP agency may waive its right to the period of exclusive processing of charges provided under section 706(c) of title VII with respect to any charge or category of charges. Copies of all such charges will be forwarded to the appropriate FEP agency.

(4) The following procedures shall be followed with respect to charges which arise in jurisdictions having a FEP agency with subject matter jurisdiction over the charges:

(i) Where any document, whether or not verified, is received by the Commission as provided in § 1601.8 which may constitute a charge cognizable under title VII, the ADA, or GINA, and where the FEP agency has not waived its right to the period of exclusive processing with respect to that document, that document shall be deferred to the appropriate FEP agency as provided in the procedures set forth below:

(A) All such documents shall be dated and time stamped upon receipt.

(B) A copy of the originial document, shall be transmitted by registered mail, return receipt requested, to the appropriate FEP agency, or, where the FEP agency has consented thereto, by certified mail, by regular mail or by hand delivery. State or local proceedings are deemed to have commenced on the date such document is mailed or hand delivered.

(C) The person claiming to be aggrieved and any person filing a charge on behalf of such person shall be notified, in writing, that the document which he or she sent to the Commission has been forwarded to the FEP agency pursuant to the provisions of section 706(c) of title VII.

(ii) Such charges are deemed to be filed with the Commission as follows:

(A) Where the document on its face constitutes a charge within a category of charges over which the FEP agency has waived its rights to the period of exclusive

processing referred to in paragraph (a)(3)(iii) of this section, the charge is deemed to be filed with the Commission upon receipt of the document. Such filing is timely if the charge is received within 300 days from the date of the alleged violation.

(B) Where the document on its face constitutes a charge which is not within a category of charges over which the FEP agency has waived its right to the period of exclusive processing referred to in paragraph (a)(3)(iii) of this section, the Commission shall process the document in accordance with paragraph (a)(4)(i) of this section. The charge shall be deemed to be filing with the Commission upon expiration of 60 (or where appropriate, 120) days after deferral, or upon the termination of FEP agency proceedings, or upon waiver of the FEP agency's right to exclusively process the charge, whichever is earliest. Where the FEP agency earlier terminates its proceedings or waives its right to exclusive processing of a charge, the charge shall be deemed to be filed with the Commission on the date the FEP agency terminated its proceedings or the FEP agency waived its right to exclusive processing of the charge. Such filing is timely if effected within 300 days from the date of the alleged violation.

(b) *Initial presentation of a charge to a FEP agency.* (1) When a charge is initially presented to a FEP agency and the charging party requests that the charge be presented to the Commission, the charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate, 120) days after a written and signed statement of facts upon which the charge is based was sent to the FEP agency by registered mail or was otherwise received by the FEP agency,

or upon the termination of FEP agency proceedings, or upon waiver of the FEP agency's right to exclusively process the charge, whichever is earliest. Such filing is timely if effected within 300 days from the date of the alleged violation.

(2) When a charge is initially presented to a FEP agency but the charging party does not request that the charge be presented to the Commission, the charging party may present the charge to the Commission as follows:

(i) If the FEP agency has refused to accept a charge, a subsequent submission of the charge to the Commission will be processed as if it were an initial presentation in accordance with paragraph (a) of this section.

(ii) If the FEP agency proceedings have terminated, the charge may be timely filed with the Commission within 30 days of receipt of notice that the FEP agency proceedings have been terminated or within 300 days from the date of the alleged violation, whichever is earlier.

(iii) If the FEP agency proceedings have not been terminated, the charge may be presented to the Commission within 300 days from the date of the alleged violation. Once presented, such a charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate, 120) days after a written and signed statement of facts upon which the charge is based was sent to the FEP agency by certified mail or was otherwise received by the FEP agency, or upon the termination of the FEP agency proceedings, or upon waiver of the FEP agency's right to exclusively process

the charge, whichever is earliest. To be timely, however, such filing must be effected within 300 days from the date of the alleged violation.

(c) *Agreements with Fair Employment Practice agencies.* Pursuant to section 705(g)(1) and section 706(b) of title VII, the Commission shall endeavor to enter into agreements with FEP agencies to establish effective and integrated resolution procedures. Such agreements may include, but need not be limited to, cooperative arrangements to provide for processing of certain charges by the Commission, rather than by the FEP agency during the period specified in section 706(c) and section 706(d) of title VII.

(d) *Preliminary relief.* When a charge is filed with the Commission, the Commission may make a preliminary investigation and commence judicial action for immediate, temporary or preliminary relief pursuant to section 706(f)(2) of title VII.

(e) *Commissioner charges.* A charge made by a member of the Commission shall be deemed filed upon receipt by the Commission office responsible for investigating the charge. The Commission will notify a FEP agency when an allegation of discrimination is made by a member of the Commission concerning an employment practice occurring within the jurisdiction of the FEP agency. The FEP agency will be entitled to process the charge exclusively for a period of not less than 60 days if the FEP agency makes a written request to the Commission within 10 days of receiving notice that the allegation has been filed. The 60-day period shall be extended to 120 days during the first year after the effective date of the qualifying State or local law.

7. 29 C.F.R. 1601.14 provides:

Service of charge or notice of charge.

(a) Within ten days after the filing of a charge in the appropriate Commission office, the Commission shall serve respondent a copy of the charge, by mail or in person, except when it is determined that providing a copy of the charge would impede the law enforcement functions of the Commissiion. Where a copy of the charge is not provided, the respondent will be served with a notice of the charge within ten days after the filing of the charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice. Where appropriate, the notice may include the identity of the person or organization filing the charge.

(b) District Directors, Field Directors, Area Directors, Local Directors, the Director of the Office of Field Programs, and the Director of Field Management Programs, or their designees, are hereby delegated the authority to issue the notice described in paragraph (a) of this section.

8. 29 C.F.R. 1601.28 provides:

Notice of right to sue: Procedure and authority.

(a) *Issuance of notice of right to sue upon request.* (1) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision, the Commission shall promptly issue such notice as described in § 1601.28(e)

to all parties, at any time after the expiration of one hundred eighty (180) days from the date of filing of the charge with the Commission, or in the case of a Commissioner charge 180 days after the filing of the charge or 180 days after the expiration of any period of reference under section 706(d) of title VII as appropriate.

(2) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision, the Commission may issue such notice as described in § 1601.28(e) with copies to all parties, at any time prior to the expiration of 180 days from the date of filing of the charge with the Commission; provided that the District Director, the Field Director, the Area Director, the Local Director, the Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs has determined that it is probable that the Commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the charge and has attached a written certificate to that effect.

(3) Issuance of a notice of right to sue shall terminate further proceeding of any charge that is not a Commissioner charge unless the District Director; Field Director; Area Director; Local Director; Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs; or the General Counsel, determines at that time or at a later time that it would effectuate the purpose of title VII, the ADA, or GINA to further process the charge. Issuance of a

notice of right to sue shall not terminate the processing of a Commissioner charge.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(b) *Issuance of notice of right to sue following Commission disposition of charge.* (1) Where the Commission has found reasonable cause to believe that title VII, the ADA, or GINA has been violated, has been unable to obtain voluntary compliance with title VII, the ADA, or GINA, and where the Commission has decided not to bring a civil action against the respondent, it will issue a notice of right to sue on the charge as described in § 1601.28(e) to:

(i) The person claiming to be aggrieved, or,

(ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class and provide a copy thereof to all parties.

(2) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the charge to the person claiming to be aggrieved.

(3) Where the Commission has dismissed a charge pursuant to § 1601.18, it shall issue a notice of right to sue as described in § 1601.28(e) to:

(i) The person claiming to be aggrieved, or,

(ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class, and provide a copy thereof to all parties.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(c) The Commission hereby delegates authority to District Directors, Field Directors, Area Directors, Local Directors, the Director of the Office of Field Programs, or Director of Field Management Programs or their designees, to issue notices of right to sue, in accordance with this section, on behalf of the Commission. Where a charge has been filed on behalf of a person claiming to be aggrieved, the notice of right to sue shall be issued in the name of the person or organization who filed the charge.[1]

(d) *Notices of right-of-sue for charges against Governmental respondents.* In all cases where the respondent is a government, governmental agency, or a political subivision, the Commission will issue the notice of right to sue when there has been a dismissal of a charge. The notice of right to sue will be issued in accordance with § 1601.28(e). In all other cases where

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[1] Formal Ratification-Notice is hereby given that the EEOC at a Commission meeting on March 12, 1974, formally ratified the acts of the District Directors of EEOC District Offices in issuing notices of right to sue pursuant to Commission practice instituted on October 15, 1969, and continued through March 18, 1974. 39 FR 10178 (March 18, 1974).

the respondent is a government, governmental agency, or political subdivision, the Attorney General will issue the notice of right to sue, including the following cases:

(1) When there has been a finding of reasonable cause by the Commission, there has been a failure of conciliation, and the Attorney General has decided not to file a civil action; and

(2) Where a charging party has requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2). In cases where a charge of discrimination results in a finding of cause in part and no cause in part, the case will be treated as a "cause" determination and will be referred to the Attorney General.

(e) *Content of notice of right to sue.* The notice of right to sue shall include:

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA within 90 days from receipt of such authorization;

(2) Advice concerning the institution of such civil action by the person claiming to be aggrieved, where appropriate;

(3) A copy of the charge;

(4) The Commission's decision, determination, or dismissal, as appropriate.